

Exhibit M - Jamie Frost Deposition

Jamie Frost, Esq. ~ 30(b)(6) Rep. of LVMPD ~ November 12, 2019
* * * Videotaped Deposition * * *

Page 75

1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA)
3) ss:
4 COUNTY OF CLARK)

5 I, Sarah Safier, CCR No. 808, do thereby
6 certify: That I reported the deposition of JAMIE
7 FROST, ESQUIRE, commencing on Tuesday,
8 November 12, 2019, at 10:05 a.m.

9 That prior to being deposed, the witness was
10 duly sworn by me to testify to the truth. That I
11 thereafter transcribed my said shorthand notes into
12 typewriting and that the typewritten transcript is a
13 complete, true, and accurate transcription of my said
14 shorthand notes. That prior to the conclusion of the
15 proceedings, pursuant to NRCP 30(e), the reading and
16 signing of the transcript was requested by the
17 witness or a party.

18 I further certify that I am not a relative
19 or employee of counsel of any of the parties, nor a
20 relative or employee of the parties involved in said
21 action, nor a person financially interested in the
22 action.

23 IN WITNESS WHEREOF, I have set my hand in my
24 office in the County of Clark, State of Nevada, this
25 21st day of November, 2019.

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Jamie Frost, Esq. ~ 30(b)(6) Rep. of LVMPD ~ November 12, 2019
* * * Videotaped Deposition * * *

Page 1

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 * * * * *

4 TRINITA FARMER,)
5 individually,) Case No.
6 Plaintiff,) 2:18-cv-00860-GMN-VCF
7 vs.)
8 LAS VEGAS METROPOLITAN)
9 POLICE DEPARTMENT, a)
10 political subdivision of)
11 the State of Nevada;)
12 KENNETH LOPERA,)
13 individually; TRAVIS)
14 CRUMRINE, individually;)
15 MICHAEL TRAN, individually;)
16 MICHAEL FLORES,)
17 individually,)
18 Defendants.)
19 _____)

CONDENSED
TRANSCRIPT

20 VIDEOTAPED DEPOSITION OF JAMIE FROST, ESQUIRE

21 30(b)(6) REPRESENTATIVE OF LAS VEGAS METROPOLITAN
22 POLICE DEPARTMENT

23 Taken on Tuesday, November 12, 2019

24 At 10:05 a.m.

25 Taken at Lagomarsino Law

3005 West Horizon Ridge Parkway

Suite 241

Henderson, Nevada 89052

Reported by: Sarah Safier, CCR No. 808

Jamie Frost, Esq. ~ 30(b)(6) Rep. of LVMPD ~ November 12, 2019
 * * * Videotaped Deposition * * *

2 (Pages 2 to 5)

<p style="text-align: right;">Page 2</p> <p>1 VIDEOTAPED DEPOSITION OF JAMIE FROST, ESQUIRE, 2 30(b)(6) Representative of Las Vegas Metropolitan 3 Police Department, taken at Lagomarsino Law, 3005 4 West Horizon Ridge Parkway, Henderson, Nevada, on 5 Tuesday, November 12, 2019, at 10:05 a.m., before 6 Sarah Safier, Certified Court Reporter, in and for 7 the State of Nevada. 8 APPEARANCES: 9 For the Plaintiff: 10 ANDRE LAGOMARSINO, ESQ. 11 TYUS SHEPPARD 12 Lagomarsino Law 13 3005 West Horizon Ridge Parkway 14 Suite 241 15 Henderson, Nevada 89052 16 17 For the Defendant Kenneth Lopera: 18 DANIEL R. MCNUTT, ESQ. 19 McNutt Law Firm, P.C. 20 625 South Eighth Street 21 Las Vegas, Nevada 89101 22 For the Defendants Las Vegas Metropolitan Police 23 Department, Travis Crumrine, Michael Tran, Michael 24 Flores and Deponent: 25 CRAIG R. ANDERSON, ESQ. Marquis Aurbach Coffing 10001 Park Run Drive Las Vegas, Nevada 89145 Also Present: CHRISTOPHER BAUGH, Videographer</p>	<p style="text-align: right;">Page 4</p> <p>1 THE VIDEOGRAPHER: Good morning. Today is 2 November 12, 2019. The time is approximately 3 10:05 a.m. This begins the video deposition of 4 Jamie Frost. 5 We are located at Lagomarsino Law, 3005 West 6 Horizon Ridge Parkway, Suite 241, Henderson, Nevada 7 89052. 8 My name is Christopher Baugh, court 9 videographer with Las Vegas Legal Video. 10 This is United States District Court, 11 District of Nevada, Case No. 2:18-cv-00860-GMN-VCF, 12 in the matter of Trinita Farmer versus Las Vegas 13 Metropolitan Police Department, et al. 14 This video deposition is requested by 15 attorneys for the plaintiff. 16 Will counsel please state your appearances 17 for the record. 18 MR. LAGOMARSINO: Andre Lagomarsino for 19 plaintiff, Trinita Farmer. Also present today is 20 Tyus Sheppard shadowing. 21 MR. MCNUTT: Dan McNutt on behalf of Officer 22 Ken Lopera. 23 MR. ANDERSON: Craig Anderson on behalf of 24 Las Vegas Metropolitan Police Department, Officers 25 Crumrine, Tran and Flores and the witness.</p>
<p style="text-align: right;">Page 3</p> <p>1 INDEX 2 Witness: JAMIE FROST, ESQUIRE 3 Examination Further Examination 4 By Mr. Lagomarsino 5 71 5 By Mr. McNutt 63 6 EXHIBITS PAGE 7 1 - 9/30/17 Memo to Lopera/Notice of 15 8 Pre-Termination Hearing, Adjudication 9 of Complaint/Lopera 5/14/17 10 1A - Plaintiff's First Amended Notice of 6 11 Videotaped Deposition 12 2 - Employment Separation Notice 11 13 9 - Cases Involving the Neck 8 14 10 - 11/27/14 Adjudication of Complaint 38 15 11 - 10/8/13 Adjudication of Complaint 40 16 12 - 10/31/14 Adjudication of Complaint 41 17 13 - 1/12/15 Adjudication of Complaint 44 18 14 - 6/29/14 Adjudication of Complaint 47 19 15 - 2/11/16 Adjudication of Complaint 48 20 16 - 1/28/15 Adjudication of Complaint 48 21 17 - 8/24/17 Memo to Sheriff Lombardo, 13 22 Subject: Tactical Review Board 23 21 - Use of Force Complaints 2012-2017 51 24 22 - LVNR Statistics 2012 - 2017 57 25 INFORMATION TO BE PROVIDED Page Line 72 25</p>	<p style="text-align: right;">Page 5</p> <p>1 THE VIDEOGRAPHER: Thank you, Counsel. 2 The deponent may now be sworn in by Sarah 3 Safier with All-American Court Reporters. 4 Whereupon -- 5 JAMIE FROST, ESQUIRE 6 being first duly sworn to tell the truth, the whole 7 truth, and nothing but the truth, was examined and 8 testified as follows: 9 EXAMINATION 10 BY MR. LAGOMARSINO: 11 Q Can you please state your name and spell 12 your last name for the record. 13 A Jamie Frost, F-R-O-S-T. 14 Q Have you ever had your deposition taken 15 before? 16 A Yes. 17 Q On how many occasions? 18 A I think two that I can recall. 19 Q Okay. Were they in a similar 30(b)(6) 20 capacity? 21 A One was. I think the other one might have 22 been -- it was me in my position at Metro, but I 23 can't remember if I was actually a 30(b)(6) or not. 24 Q You understand that today you have been 25 designated as a 30(b)(6) witness?</p>

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3 (Pages 6 to 9)

<p style="text-align: right;">Page 6</p> <p>1 A Yes.</p> <p>2 Q And in that regard, you have an obligation</p> <p>3 to tell the truth?</p> <p>4 A Yes.</p> <p>5 Q I'm going to hand you -- we'll mark this as</p> <p>6 Exhibit 1A, because I have a different 1.</p> <p>7 (Deposition Exhibit No. 1A was</p> <p>8 marked for identification.)</p> <p>9 BY MR. LAGOMARSINO:</p> <p>10 Q Have you seen Exhibit 1A before?</p> <p>11 A Yes, I believe so.</p> <p>12 Q All right. And what is your understanding</p> <p>13 of which topics you are here to testify about? And</p> <p>14 it may be easier if I just go through them and ask</p> <p>15 you if you're here to testify about certain topics.</p> <p>16 So are you here to testify about Topic</p> <p>17 No. 9?</p> <p>18 A Yes.</p> <p>19 Q And that is, just for the record: "The</p> <p>20 separation process between LVMPD and Defendant</p> <p>21 Lopera, including all facts, documents, e-mails and</p> <p>22 other information regarding the separation. Any</p> <p>23 claim of privilege should be accompanied by a</p> <p>24 privilege log."</p> <p>25 Are you here to talk about Topics 17, 18, 19</p>	<p style="text-align: right;">Page 8</p> <p>1 A No.</p> <p>2 Q Have you ever reviewed video footage of the</p> <p>3 incident?</p> <p>4 A Yes.</p> <p>5 Q Without getting into privilege or work</p> <p>6 product information, are you working on this case</p> <p>7 from Metro's perspective internally?</p> <p>8 A No.</p> <p>9 (Deposition Exhibit No. 9 was</p> <p>10 marked for identification.)</p> <p>11 BY MR. LAGOMARSINO:</p> <p>12 Q Did you review Exhibit 9 in preparation for</p> <p>13 your deposition?</p> <p>14 A Yes.</p> <p>15 Q And then is it your understanding that some</p> <p>16 time after Exhibit 9 was produced in this case, a</p> <p>17 subsequent request to produce was done or served for</p> <p>18 individual records relating to those incidents in</p> <p>19 Exhibit 9?</p> <p>20 A I believe so, yes.</p> <p>21 Q And did you review that documentation as</p> <p>22 well?</p> <p>23 A The Adjudication of Complaint?</p> <p>24 Q Yes.</p> <p>25 A Yes. I paged through them.</p>
<p style="text-align: right;">Page 7</p> <p>1 and 20?</p> <p>2 A Yes.</p> <p>3 Q So 17 is: "An explanation of documentation</p> <p>4 produced by LVMPD in this case concerning all LVNR</p> <p>5 reported incidents."</p> <p>6 18 is: "The discipline LVMPD police</p> <p>7 officers have received for using an improper neck</p> <p>8 restraint in the five years prior to the incident and</p> <p>9 involving Tashi Farmer."</p> <p>10 19 is: "The discipline LVMPD police</p> <p>11 officer" -- it should say police officers -- "have</p> <p>12 received for using an LVNR in the five years prior to</p> <p>13 the incident and involving Tashi Farmer."</p> <p>14 And then 20 is: "The discipline Defendant</p> <p>15 Lopera received from his actions on the May 14, 2017,</p> <p>16 incident involving Tashi Farmer."</p> <p>17 What did you do to prepare yourself to</p> <p>18 testify today?</p> <p>19 A I reviewed the documents that I believe were</p> <p>20 produced to you guys, the comparable discipline,</p> <p>21 which -- regarding the LVNR incidents.</p> <p>22 Q Okay. Any other documents?</p> <p>23 A No, I don't believe so.</p> <p>24 Q Did you review in preparation for your</p> <p>25 deposition any video footage of the incident?</p>	<p style="text-align: right;">Page 9</p> <p>1 Q Okay. So if I have specific questions, we</p> <p>2 can kind of go through those, correct?</p> <p>3 A Yes. I'll do my best to answer them.</p> <p>4 Q Okay. Now, if you don't know the answer to</p> <p>5 a question today, I'd ask that you just tell me you</p> <p>6 don't know. We don't want you to guess.</p> <p>7 You understand that?</p> <p>8 A Yes.</p> <p>9 Q And when were you first -- what is your --</p> <p>10 strike that.</p> <p>11 What is your occupation?</p> <p>12 A I'm labor relations counsel for Las Vegas</p> <p>13 Metropolitan Police Department.</p> <p>14 Q Okay. And when were you first hired by</p> <p>15 Metro?</p> <p>16 A In April 2015.</p> <p>17 Q When -- are you an attorney?</p> <p>18 A Yes.</p> <p>19 Q When did you receive your license in Nevada?</p> <p>20 A In October 2009-ish.</p> <p>21 Q Are you licensed in any other states?</p> <p>22 A No.</p> <p>23 Q Okay. After getting your license, where was</p> <p>24 your first job as an attorney?</p> <p>25 A I worked for Judge Glass at the Eighth</p>

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<p style="text-align: right;">Page 10</p> <p>1 Judicial District Court.</p> <p>2 Q Okay. And you were a law clerk?</p> <p>3 A Yes.</p> <p>4 Q All right. And a year, two years or --</p> <p>5 A One year.</p> <p>6 Q After working for Judge Glass, where did you</p> <p>7 work?</p> <p>8 A Marquis Aurbach Coffing.</p> <p>9 Q And what was your position there?</p> <p>10 A I was an attorney associate.</p> <p>11 Q Okay. And did you work in litigation?</p> <p>12 A Yes.</p> <p>13 Q And you took numerous depositions, I'm</p> <p>14 assuming?</p> <p>15 A Yes.</p> <p>16 Q And you also not only defended but were the</p> <p>17 questioning attorney, correct?</p> <p>18 A That's correct.</p> <p>19 Q So do you feel comfortable moving forward</p> <p>20 without all the normal admonitions in terms of</p> <p>21 understanding the question and so forth?</p> <p>22 A I do.</p> <p>23 Q Okay. All right. In fact, we have sat in</p> <p>24 depositions before, correct?</p> <p>25 A Yes, we have.</p>	<p style="text-align: right;">Page 12</p> <p>1 any time?</p> <p>2 A All separation notices are sent to me at the</p> <p>3 time that they separate. I don't remember if I</p> <p>4 actually double-clicked and looked at the attachment</p> <p>5 or not in this particular one.</p> <p>6 Q Okay. Does it appear to you to be a true</p> <p>7 and correct copy of Ken Lopera's separation notice?</p> <p>8 A Yes, it does.</p> <p>9 Q And what was the last date that is noted as</p> <p>10 Mr. Lopera having worked?</p> <p>11 A It says here September 22, 2017, but I don't</p> <p>12 have personal knowledge of that.</p> <p>13 Q Okay. Now, the incident involving Officer</p> <p>14 Lopera and Tashi Farmer occurred May 14, 2017, or</p> <p>15 thereabouts. Is that your understanding?</p> <p>16 A Yes.</p> <p>17 Q Typically, what happens with officers when</p> <p>18 they're involved in an incident that results in the</p> <p>19 death of a citizen?</p> <p>20 A They are investigated by our Critical</p> <p>21 Incident Review Team, and they're generally placed on</p> <p>22 relief of duty, administrative relief of duty.</p> <p>23 Q Do you know if he was relieved of duty with</p> <p>24 pay pending the investigation?</p> <p>25 A Yes, he was.</p>
<p style="text-align: right;">Page 11</p> <p>1 Q And as you probably know, I can stutter,</p> <p>2 mumble, be a little bit of a low talker, so if you</p> <p>3 don't understand the question, please let me know.</p> <p>4 A Will do.</p> <p>5 Q All right. Other than the adjudications and</p> <p>6 this table that we have as Exhibit 9, have you</p> <p>7 reviewed any other documents in preparation for your</p> <p>8 deposition?</p> <p>9 A I don't recall reviewing anything else.</p> <p>10 Q Okay. I would like to move forward right</p> <p>11 now with Topic No. 9, the separation process between</p> <p>12 LVMPD and Defendant Lopera.</p> <p>13 (Deposition Exhibit No. 2 was</p> <p>14 marked for identification.)</p> <p>15 BY MR. LAGOMARSINO:</p> <p>16 Q What is Exhibit 2?</p> <p>17 A It's a separation notice.</p> <p>18 Q For the record, it's Bates LVMPD 4187.</p> <p>19 Is this a Metropolitan Police Department</p> <p>20 form?</p> <p>21 A Yes.</p> <p>22 Q And is this the separation notice for Ken</p> <p>23 Lopera?</p> <p>24 A Yes.</p> <p>25 Q Have you ever seen this document before at</p>	<p style="text-align: right;">Page 13</p> <p>1 Q And is that possibly the reason why his last</p> <p>2 day of work could be September 22, 2017?</p> <p>3 A Yes.</p> <p>4 Q Okay. All right. It says here that Ken</p> <p>5 Lopera -- strike that.</p> <p>6 Do you know why the box "Voluntary</p> <p>7 Retirement" is checked?</p> <p>8 A Yes, because that's how he retired. That's</p> <p>9 how he separated, voluntarily.</p> <p>10 Q And why is "Disability PERS" checked?</p> <p>11 A He must have sought a disability retirement</p> <p>12 through PERS, but that's all done through PERS.</p> <p>13 Q Okay. Do you know what his disability was?</p> <p>14 A No.</p> <p>15 Q Were you involved in any discussions or</p> <p>16 negotiations with Officer Lopera or his counsel about</p> <p>17 separation of employment from Metro?</p> <p>18 A No. And I'm not aware of any negotiations</p> <p>19 that occurred.</p> <p>20 Q Okay.</p> <p>21 (Deposition Exhibit No. 17 was</p> <p>22 marked for identification.)</p> <p>23 BY MR. LAGOMARSINO:</p> <p>24 Q Have you ever seen Exhibit 17 before?</p> <p>25 A Yes.</p>

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<p style="text-align: right;">Page 14</p> <p>1 Q What is Exhibit 17?</p> <p>2 A It is the memo that the board chair writes</p> <p>3 in conjunction with the CIRT team after the Use of</p> <p>4 Force Review Board and Tactical Review Board. It has</p> <p>5 the findings of the board, for both the Use of Force</p> <p>6 Review Board and Tactical Review Board, and the</p> <p>7 recommendations on how to proceed handling each</p> <p>8 employee.</p> <p>9 Q And is the chair of the board Assistant</p> <p>10 Sheriff Tim Kelly? If you could turn to the last</p> <p>11 page.</p> <p>12 A Yes, that's correct.</p> <p>13 Q And in reference to the employees involved,</p> <p>14 Crumrine, Tran, Flores and Lopera and Lif,</p> <p>15 recommendations were made regarding personnel action</p> <p>16 in this memo, correct?</p> <p>17 A That's correct.</p> <p>18 Q And in this memo, with respect to Officer</p> <p>19 Lopera, the recommendation is stated to review the</p> <p>20 Adjudication of Complaint. That's on Page 377. Is</p> <p>21 that accurate?</p> <p>22 A Yes, that's accurate.</p> <p>23 Q Do you know why they would reference the</p> <p>24 Adjudication of Complaint?</p> <p>25 A That's how they do it when they're issuing</p>	<p style="text-align: right;">Page 16</p> <p>1 BY MR. LAGOMARSINO:</p> <p>2 Q Exhibit 1 is comprised of two documents, it</p> <p>3 appears. First is a memorandum dated September 20,</p> <p>4 2017, to Officer Lopera. Is it from the sheriff?</p> <p>5 A The memo?</p> <p>6 Q Yes.</p> <p>7 A Yes. I mean, his designee signs it, which</p> <p>8 is either myself or Lisa Lichtenberger, in this</p> <p>9 particular case, the manager of labor relations.</p> <p>10 Q So did Lisa Lichtenberger sign this one?</p> <p>11 A That's correct.</p> <p>12 Q Okay. And does this appear to be a true and</p> <p>13 correct copy of the memorandum issued to Ken Lopera?</p> <p>14 A Yes.</p> <p>15 Q And it appears that attached to this memo is</p> <p>16 the Adjudication of Complaint, correct?</p> <p>17 A That's correct.</p> <p>18 Q And when it's provided to Officer Lopera, is</p> <p>19 it provided as the memo and the attached complaint?</p> <p>20 A Not always, but it looks like it was done in</p> <p>21 this particular case.</p> <p>22 Q Okay. And does that appear to be a true and</p> <p>23 correct copy of the Adjudication of Complaint with</p> <p>24 respect to Officer Lopera?</p> <p>25 A Yes.</p>
<p style="text-align: right;">Page 15</p> <p>1 discipline. They -- I say "they" because the board</p> <p>2 chair rotates depending on who's handling which</p> <p>3 board.</p> <p>4 Q Okay.</p> <p>5 A We're given a recommendation, labor</p> <p>6 relations, and we draft it up, attach that to -- I</p> <p>7 believe they attach it; I've never seen it happen.</p> <p>8 But I believe they attached it to this memo that goes</p> <p>9 up to the sheriff, and then he can review the actual</p> <p>10 Adjudication of Complaint versus just the</p> <p>11 recommendation of how to handle.</p> <p>12 Q And were Adjudications of Complaint</p> <p>13 completed with respect to Crumrine, Tran and Flores?</p> <p>14 A At the time, no.</p> <p>15 Q Okay. Have they ever been completed?</p> <p>16 A I knew that was going to be your next</p> <p>17 question. I have to think about it. Definitely not</p> <p>18 for Flores or Tran. I have to think about it for</p> <p>19 Crumrine.</p> <p>20 Q Okay.</p> <p>21 A And I can get back to you on that.</p> <p>22 Q Okay.</p> <p>23 (Deposition Exhibit No. 1 was</p> <p>24 marked for identification.)</p> <p>25 ///</p>	<p style="text-align: right;">Page 17</p> <p>1 MR. ANDERSON: Are those your highlights in</p> <p>2 there, though, Andre?</p> <p>3 MR. LAGOMARSINO: Oh, yes. Sorry.</p> <p>4 BY MR. LAGOMARSINO:</p> <p>5 Q Throughout the day, we may have highlights.</p> <p>6 When I'm asking if they're true and correct copies, I</p> <p>7 mean to say that not including the highlights.</p> <p>8 A Okay.</p> <p>9 Q So same answer?</p> <p>10 A Yes.</p> <p>11 Q Okay. All right. Now, the recommendation</p> <p>12 from -- strike that.</p> <p>13 Who makes the recommendation as to</p> <p>14 disciplinary action with respect to Officer Lopera,</p> <p>15 or who made that?</p> <p>16 A Sheriff Tim Kelly.</p> <p>17 Q Okay. And was the recommendation that</p> <p>18 Officer Lopera be terminated?</p> <p>19 A That's correct.</p> <p>20 Q Do you know why Officer Lopera was allowed</p> <p>21 to retire on disability?</p> <p>22 MR. MCNUTT: Objection. Form.</p> <p>23 THE WITNESS: So we can't prevent that. He</p> <p>24 would go to PERS and seek a medical disability, and</p> <p>25 that whole process is done through PERS without the</p>

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<p style="text-align: right;">Page 18</p> <p>1 department's input, necessarily. I think there's one 2 form that's filled out by a supervisor or someone, 3 depends on the case. I'm not well-versed on how 4 medical disability works. 5 But we don't have any say over whether 6 somebody gets a medical disability or not. We would 7 proceed with our normal process like we did in this 8 case; we'd schedule a pre-term hearing, because the 9 Adjudication of Complaint termination is just a 10 recommendation. It has to go to a pre-term board 11 before they're terminated. And as you can see here, 12 it's about 28 days before that gets scheduled. Then 13 the sheriff has to approve the recommendation for the 14 pre-term board. 15 But if they do anything in between that time 16 period, resign, resign through PERS disability, 17 that's their call. 18 BY MR. LAGOMARSINO: 19 Q So in terms of the timing, Officer Lopera, 20 it appears, was notified on September 20, 2017. The 21 recommendation was that he be terminated, correct? 22 A He signed it on the 21st. 23 Q Okay. The 21st. 24 And it appears that he submitted his 25 separation the next day on September 22nd?</p>	<p style="text-align: right;">Page 20</p> <p>1 department with the associations. There are two 2 different ones now: One for PMSA, the supervisors; 3 and one for PPACE, civilian; and PPA, the first-line 4 officers. And it determines our level of discipline. 5 Q Are those available online? 6 A I don't believe so, no. It's available 7 internally online or intranet, but I don't believe 8 it's public record for the public to view. 9 Q In this case, would that guide have to be 10 consulted prior to a recommendation being made? 11 A Yes, although when you have a truthfulness 12 or gross insubordination, everyone knows those are 13 automatic term cases. 14 Q Okay. 15 A And I'm not sure, I'd have to look back, 16 what his use of force was called. But -- yeah, 17 that's also gross inappropriate use of force. That's 18 also a terminable offense. 19 Q So I'm going to kind of call for a narrative 20 answer. Can you explain the process that Officer -- 21 well, strike that. 22 Can you describe the process that Officer 23 Lopera went through in terms of his separation from 24 Metro, starting from the incident itself involving 25 Tashi Farmer through and inclusive of his retirement?</p>
<p style="text-align: right;">Page 19</p> <p>1 A That's correct. 2 Q Okay. Is there any vetting process to 3 determine whether Officer Lopera was, in fact, 4 disabled? 5 A PERS has a doctor that reviews their medical 6 documents from their doctor, and then they make the 7 determination. And the department doesn't have a say 8 over that. 9 Q Who is that doctor? 10 A I have no idea. And those are documents 11 that I believe would be housed with PERS. 12 Q Are you aware of any other cases, either 13 while you've been with the department or before the 14 department, where officers had termination 15 recommended and then they were allowed to voluntarily 16 retire? 17 A Absolutely. It happens all the time. They 18 don't want to go through the termination proceedings 19 and end up with a termination on their record, so 20 they resign prior to. 21 Q Okay. Are you aware of a document called 22 the "Disciplinary Decision Guide"? 23 A Yes. 24 Q What is that? 25 A It is a document that's negotiated by the</p>	<p style="text-align: right;">Page 21</p> <p>1 A So basically the night of he gets relieved 2 of duty. Again, it's administrative relief of duty 3 at that point. There's a CIRT investigation that 4 takes place and a FIT investigation that takes place. 5 At some point, those -- CIRT comes up with 6 their recommended findings, and they schedule a 7 hearing with the board. That would be a Use of Force 8 Review Board and a Tactical Review Board. The Use of 9 Force is just for the officer who actually used 10 force; the Tactical Review Board are any other 11 officers that might have been involved, which is why 12 you see more names on that memo. 13 They go to the Use of Force Review Board and 14 Tactical Review Board. The Use of Force is first, 15 Tactical Review Board is second. The Use of Force 16 Review Board includes citizens, civilians from 17 outside of Metro that vote on the determination. And 18 then the TRB, Tactical Review Board, includes just 19 internal members. 20 The findings that you see on this document, 21 the Exhibit 17, would be what came out of that board 22 on all of the officers and the subject employees. 23 At that point, for Officer Lopera, a 24 conversation is had between the chain, the chair of 25 the board and labor relations to determine what the</p>

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7 (Pages 22 to 25)

<p style="text-align: right;">Page 22</p> <p>1 appropriate level of discipline being. Labor 2 relations looks at the Disciplinary Decision Guide 3 and comparable discipline to make a termination 4 recommendation. 5 Like I said, in this particular case, there 6 were three different policy violations that result in 7 automatic termination. There isn't discretion for 8 the chain or anybody else to determine. 9 So at that point, labor relations would 10 draft the Adjudication of Complaint with approval 11 from, in this particular case, Assistant Sheriff Tim 12 Kelly. Once he approves it, he sends everything up 13 to the sheriff. Once the sheriff approves everything 14 from that process, then the Adjudication of Complaint 15 is signed with the recommendation of termination. 16 That gets signed by the assistant sheriff and the 17 undersheriff. 18 Once it comes back to labor relations, we 19 then work on scheduling a pre-termination hearing. 20 Had he not resigned prior to the pre-termination 21 hearing, we would have proceeded with that. The 22 pre-term board would have made their determination on 23 whether they were going to uphold the termination 24 recommendation. 25 From there, their recommendation goes to the</p>	<p style="text-align: right;">Page 24</p> <p>1 make the determination on whether the use of force 2 violates the use of force policy or not. That's it. 3 Then it's the chain who makes the 4 determination on whether it's a gross inappropriate 5 use of force or just a bad use of force. 6 Q Okay. 7 A And chains have considered all different 8 types of things when considering that. But we 9 have -- 10 MR. MCNUTT: I'm sorry, who considered all 11 types of things. 12 THE WITNESS: The chain. 13 MR. MCNUTT: The chain? 14 THE WITNESS: Yeah. So the chain of 15 command. 16 MR. MCNUTT: The chain of command. 17 THE WITNESS: In this particular case, it 18 would be Assistant Sheriff Tim Kelly. Whoever is 19 determining discipline are the ones that would 20 determine whether it's gross inappropriate use of 21 force or not. And, again, there's no definition. 22 BY MR. LAGOMARSINO: 23 Q So if there's use of force that is a policy 24 violation, is it basically when you say "bad use of 25 force," is that basically what it's called, "bad use</p>
<p style="text-align: right;">Page 23</p> <p>1 sheriff for final approval, whether he is going to 2 agree with the board or not. 3 In this particular case, he resigned prior 4 to the pre-term hearing as we discussed the PERS 5 medical disability retirement, and so we never had 6 the pre-termination hearing. 7 Q Are you aware of whether Officer Lopera had 8 a disability prior to the incident involving Tashi 9 Farmer? 10 A I am not aware one way or the other. 11 Q What were the bases for justifying 12 termination of Officer Lopera? 13 A The three line items, per se, would be 14 truthfulness, gross insubordination and gross 15 inappropriate use of force. 16 Q And you mentioned that there's no discretion 17 on certain line items in terms of termination being 18 recommended. Is there discretion on the gross 19 inappropriate use of force? 20 A No. 21 Q What are the levels of -- well, strike that. 22 What is grossly inappropriate use of force? 23 A We don't have a definition of that. So what 24 happens is whoever the investigating body is, whether 25 it's the Critical Incident Review Team or IAB, they</p>	<p style="text-align: right;">Page 25</p> <p>1 of force"? 2 A No. That's just my name. It could be 3 "inappropriate," "unnecessary." It just -- basically 4 it would say in the -- in the memo or in the 5 investigative report for the IAB side that it was a 6 violation of the use of force policy. Sometimes they 7 put a word before it, sometimes they don't. 8 Q Okay. So the words you have seen, and 9 correct me if I'm wrong, are "inappropriate use of 10 force," correct? 11 A Uh-huh. I've seen "inappropriate" and I've 12 seen "unnecessary." 13 Q Okay. And then "grossly inappropriate" is 14 what's here, correct? 15 A Right. But that's not a determination made 16 by the investigating body. It's a determination made 17 by the chain that's adjudicating the case. 18 Q Okay. In this case, who would be part of 19 the chain that adjudicated Lopera's case? 20 A Assistant Sheriff Tim Kelly, he might have 21 consulted the lower parts of the chain, but on TRBs 22 and use of force, it's the chair that handles the 23 discipline. 24 Q Okay. Have you seen the term "grossly 25 inappropriate use of force" used in other cases</p>

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8 (Pages 26 to 29)

<p style="text-align: right;">Page 26</p> <p>1 involving officers?</p> <p>2 A Yes.</p> <p>3 Q Which officers do you recall?</p> <p>4 A Am I allowed to say that, Craig?</p> <p>5 MR. ANDERSON: The civilians?</p> <p>6 THE WITNESS: No, the names of officers that</p> <p>7 have also been sustained for gross inappropriate use</p> <p>8 of force.</p> <p>9 MR. ANDERSON: Yeah, I don't think we're</p> <p>10 allowed to say that because of privacy issues.</p> <p>11 BY MR. LAGOMARSINO:</p> <p>12 Q Okay. Well, then let's use numbers and then</p> <p>13 talk about the types of cases that they were. So</p> <p>14 let's say under Number 1, what's the first example</p> <p>15 that you can recall?</p> <p>16 A So I can only think of two. I could be</p> <p>17 wrong, because I didn't look that up, but I can only</p> <p>18 think of two. It is rare. And that's two in my five</p> <p>19 years of being at the department. There might have</p> <p>20 been more prior to me.</p> <p>21 The one I can think of -- maybe he didn't</p> <p>22 get that designation. I know we were going back and</p> <p>23 forth on it with the chain. I'm not going to</p> <p>24 confirm, because I'm not 100 percent certain that we</p> <p>25 actually ended up calling it that.</p>	<p style="text-align: right;">Page 28</p> <p>1 see there, it was overturned.</p> <p>2 Q So was it recommended that he be terminated</p> <p>3 but ultimately it resulted in a 40-hour suspension?</p> <p>4 A No. It actually went through full</p> <p>5 termination. So it was recommended, went to the</p> <p>6 pre-term board, that upheld the termination, the</p> <p>7 sheriff upheld the termination. This employee was</p> <p>8 actually terminated.</p> <p>9 And then through the contract, they have</p> <p>10 grievance rights; he requested arbitration. And that</p> <p>11 was held, and the arbitrator overturned the</p> <p>12 termination.</p> <p>13 Q Okay. Was another punishment levied as a</p> <p>14 result of the arbitrator's decision?</p> <p>15 A Yes. They issued a 40-hour suspension --</p> <p>16 Q Okay.</p> <p>17 A -- which is our next highest level of</p> <p>18 discipline.</p> <p>19 Q Who was the arbitrator? If you don't</p> <p>20 remember the name --</p> <p>21 A I feel like it was Arbitrator Whalen, Katie</p> <p>22 Whalen --</p> <p>23 Q Okay.</p> <p>24 A -- but I could be mistaken. I could look</p> <p>25 that up for you.</p>
<p style="text-align: right;">Page 27</p> <p>1 He was terminated also for truthfulness. I</p> <p>2 can't remember if he was terminated on the gross</p> <p>3 inappropriate use of force as well or not, but it was</p> <p>4 certainly something we were considering.</p> <p>5 The second one --</p> <p>6 Q Well, before I move on, so generally, what</p> <p>7 was that case about?</p> <p>8 A A use of force that occurred in a hotel, and</p> <p>9 it did not result in a death.</p> <p>10 Q Okay. Was it a shooting?</p> <p>11 A No.</p> <p>12 Q Was it a choke hold or neck restraint?</p> <p>13 A Actually, I believe it might have been, yes.</p> <p>14 Yes. Something with a neck restraint. I</p> <p>15 don't want to call it an LVNR, because I'm not</p> <p>16 well-versed on that to say that, but yes.</p> <p>17 Q Which -- which P-number are you referring to</p> <p>18 here?</p> <p>19 A 9661. It's LVMPD 1387.</p> <p>20 Q Okay. And just for the record, that's on</p> <p>21 Bates 1387.</p> <p>22 A And I -- I don't believe that we actually</p> <p>23 ended up -- the chain ended up going with a gross</p> <p>24 inappropriate use of force. I think it was just the</p> <p>25 truthfulness that caused termination. And as you can</p>	<p style="text-align: right;">Page 29</p> <p>1 Q Do you know where Metro and the unions find</p> <p>2 these arbitrators?</p> <p>3 A No. Actually, I just looked that up the</p> <p>4 other day. It doesn't say in the contract what the</p> <p>5 qualifications are, but we have a panel of, for the</p> <p>6 PPA, five. Two are picked by the association, two</p> <p>7 are picked by the department, and one is picked by</p> <p>8 both.</p> <p>9 Q Okay.</p> <p>10 A And then they just rotate depending on the</p> <p>11 proceedings that we have, so we just cycle through</p> <p>12 them continuously.</p> <p>13 Q So you're not sure on that particular case?</p> <p>14 A I don't think it actually was a gross</p> <p>15 inappropriate use of force termination because of</p> <p>16 what I remember from the arbitrator's overturning.</p> <p>17 Q Okay. So the determination was</p> <p>18 inappropriate? Is that what you recall?</p> <p>19 A Yeah, inappropriate. It looks like it was</p> <p>20 "inappropriate" and "excessive" is the words that are</p> <p>21 used here, probably the words that were used</p> <p>22 somewhere in the adjudication.</p> <p>23 Q Okay. Are those words contained in a</p> <p>24 collective bargaining agreement? I mean, do they</p> <p>25 have -- are they of significance in terms of the</p>

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9 (Pages 30 to 33)

<p style="text-align: right;">Page 30</p> <p>1 punishment that should be received?</p> <p>2 A No. There's two categories for force.</p> <p>3 There's use of force, which would be that it violates</p> <p>4 the policy of actual use of force, and then there's</p> <p>5 gross inappropriate use of force.</p> <p>6 Q Okay. And then what was the second case</p> <p>7 that you can recall?</p> <p>8 A The second case I can recall, it -- I'm</p> <p>9 trying to see if I can see. I don't know if it's on</p> <p>10 here or not.</p> <p>11 Yes. It is LVMPD 1388.</p> <p>12 Q Okay. And that is with P-number 9845?</p> <p>13 A Yes. And, again, I don't see it on here, so</p> <p>14 I can't tell you I'm 100 percent sure. I know gross</p> <p>15 inappropriate use of force was discussed on this</p> <p>16 particular case.</p> <p>17 Q Yeah. I think it's -- sorry, I gave you the</p> <p>18 highlighted version, but I think it's -- I think one,</p> <p>19 two, three, four, five, six, seven -- seventh one</p> <p>20 there.</p> <p>21 A Oh, okay. Yes, I see that there, yes. Yes,</p> <p>22 so it was.</p> <p>23 Q Okay. Do you know in this particular case</p> <p>24 if the officer was allowed to retire?</p> <p>25 A He did not seek retirement. In fact, he</p>	<p style="text-align: right;">Page 32</p> <p>1 requested the ones that were produced in the other</p> <p>2 lawsuit which did not have Ken Lopera's CIRT</p> <p>3 statement. So the redactions are Ken Lopera's CIRT</p> <p>4 statements. I can give you one that's not redacted,</p> <p>5 because you have the CIRT statement, but because you</p> <p>6 requested that one, I gave you what I gave them. So</p> <p>7 does that make sense?</p> <p>8 MR. LAGOMARSINO: Okay. Yes.</p> <p>9 MR. ANDERSON: So anything that's redacted</p> <p>10 is something Ken Lopera's said in his CIRT statement.</p> <p>11 MR. LAGOMARSINO: Okay. Would it be</p> <p>12 possible to ask Sheri to send that? I'm not going to</p> <p>13 use it today, but...</p> <p>14 MR. ANDERSON: Yes.</p> <p>15 MR. LAGOMARSINO: It seemed like whoever was</p> <p>16 redacting was very angry.</p> <p>17 MR. ANDERSON: It was me. I'm just very bad</p> <p>18 at it.</p> <p>19 MR. LAGOMARSINO: All right.</p> <p>20 BY MR. LAGOMARSINO:</p> <p>21 Q Okay. Now, in terms of the process, I know</p> <p>22 it didn't apply to Officer Lopera, but just in</p> <p>23 general, when there's the pre-termination hearing,</p> <p>24 who participates in that hearing?</p> <p>25 A So either myself or Lisa Lichtenberger will</p>
<p style="text-align: right;">Page 31</p> <p>1 fought this case all the way through to an</p> <p>2 arbitration.</p> <p>3 Q Okay. And what was the outcome of the</p> <p>4 arbitration?</p> <p>5 A The termination was upheld.</p> <p>6 Q What was the basis for Ken Lopera's --</p> <p>7 strike that.</p> <p>8 What was the basis for the determination</p> <p>9 that Ken Lopera was grossly insubordinate?</p> <p>10 MR. MCNUTT: Objection. Form.</p> <p>11 THE WITNESS: I didn't have any</p> <p>12 conversations with the assistant sheriff, so I would</p> <p>13 go with anything that's written in this board memo</p> <p>14 that would make that call.</p> <p>15 BY MR. LAGOMARSINO:</p> <p>16 Q Okay. All right.</p> <p>17 A And it's in the Adjudication of Complaint.</p> <p>18 That would explain that as well.</p> <p>19 Q These were recently produced in this case,</p> <p>20 the board memo. Do you know why certain parts of the</p> <p>21 memo are redacted?</p> <p>22 A No.</p> <p>23 Q Did you produce these to Marquis Aurbach to</p> <p>24 produce in this case?</p> <p>25 MR. ANDERSON: I can tell you why. You</p>	<p style="text-align: right;">Page 33</p> <p>1 do it, make the representation on behalf of the</p> <p>2 department, along with the chain. And typically it's</p> <p>3 a bureau commander, depending on if it's from IAB.</p> <p>4 But in Use of Force Review Board, it would</p> <p>5 be the assistant sheriff, the chair, so in this case</p> <p>6 Assistant Sheriff Tim Kelly, and then on the other</p> <p>7 side it would be Officer Lopera, whoever he brings</p> <p>8 for his representative or representatives. And then</p> <p>9 the board members are -- there's a panel. There's</p> <p>10 the top board members and then there's alternates.</p> <p>11 It's a deputy chief, bureau commander captain and a</p> <p>12 civilian bureau commander. So it just depends on</p> <p>13 what the scheduling looks like and who gets picked</p> <p>14 for that.</p> <p>15 Q How many people are on that particular</p> <p>16 panel?</p> <p>17 A Three.</p> <p>18 Q And is that a majority decision or</p> <p>19 unanimous?</p> <p>20 A Majority.</p> <p>21 Q After the determination is made, then it's</p> <p>22 sent to the sheriff?</p> <p>23 A That's correct.</p> <p>24 Q And the sheriff either upholds or declines</p> <p>25 to uphold; is that correct?</p>

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10 (Pages 34 to 37)

<p style="text-align: right;">Page 34</p> <p>1 A Yeah.</p> <p>2 Q If the sheriff upholds it, is that when it</p> <p>3 goes to arbitration if there's an appeal?</p> <p>4 A Yeah. So if they uphold the recommendation</p> <p>5 for termination, if it's a termination recommendation</p> <p>6 and the sheriff upholds it, that's the date they're</p> <p>7 officially terminated. They leave the department,</p> <p>8 and they have the opportunity to file their request</p> <p>9 for arbitration.</p> <p>10 Q When is the last possible point an officer</p> <p>11 can voluntarily retire during this process?</p> <p>12 A When you say "voluntarily retire," going</p> <p>13 back to Exhibit 1A, are you meaning without having</p> <p>14 the designation -- okay.</p> <p>15 Q Sorry, Exhibit 2, yeah.</p> <p>16 A Exhibit 2, sorry.</p> <p>17 Q Yeah, yeah.</p> <p>18 A Do you mean -- there's voluntary</p> <p>19 resignation, voluntary retirement and voluntary</p> <p>20 termination. Are you saying when would we</p> <p>21 involuntary terminate them?</p> <p>22 Q Let me rephrase the question. So in this</p> <p>23 case, Officer Lopera took a voluntary retirement.</p> <p>24 During this general process that we have described,</p> <p>25 boards, Use of Force Board, Tactical Board, pre-term</p>	<p style="text-align: right;">Page 36</p> <p>1 be checked, knowing that their complete file would be</p> <p>2 seen by anyone who gets access to the personnel file</p> <p>3 through the waiver process that we have. So...</p> <p>4 Q Okay. I understand that. What -- just</p> <p>5 generally speaking, what is your knowledge as to the</p> <p>6 benefits an officer would receive under PERS or</p> <p>7 dis- -- if they file under disability PERS?</p> <p>8 A Generally what my personal knowledge is is</p> <p>9 that they get to start receiving their PERS right</p> <p>10 away versus having to wait until they have age or</p> <p>11 years. I don't know what that amount looks like and</p> <p>12 how much they get. I know it's a reduced amount, but</p> <p>13 I have no knowledge as to that.</p> <p>14 Q Okay. In this case, Officer Lopera had</p> <p>15 Bryan Yant as his union representative from the</p> <p>16 LVPPA. What contact does Metro have with the union</p> <p>17 representative during this process?</p> <p>18 A That's a very broad question. So just</p> <p>19 generally speaking --</p> <p>20 Q Yes.</p> <p>21 A -- they receive copies of the notice. And I</p> <p>22 say "they" because it's generally PPA. We don't</p> <p>23 always know who's going to be their specific rep</p> <p>24 until they show up on the day of their interview. So</p> <p>25 then the interview would occur in CERT, and I would</p>
<p style="text-align: right;">Page 35</p> <p>1 hearing, sheriff, arbitration, when is the last</p> <p>2 possible point somebody can take a voluntary</p> <p>3 retirement as is noted on Exhibit 2?</p> <p>4 A Okay. So the reason why I'm getting held up</p> <p>5 is because there's actual check boxes underneath</p> <p>6 those "voluntary retirement," "voluntary</p> <p>7 resignation." The only time we would check</p> <p>8 "involuntary termination" is if we actually</p> <p>9 terminated them.</p> <p>10 Q Okay.</p> <p>11 A Underneath the boxes there's "in lieu of</p> <p>12 non-confirmation" or "in lieu of pre-term hearing."</p> <p>13 We have an agreement with PPA that if they resign --</p> <p>14 I believe this is for all cases -- it's either a week</p> <p>15 or two weeks, I'm not sure off the top of my head,</p> <p>16 prior to the pre-term hearing, then we call it a</p> <p>17 "voluntary." But there have been other cases -- not</p> <p>18 this one, because we didn't even have a date set for</p> <p>19 this one -- but there have been other cases where</p> <p>20 we've allowed it to be closer to because it is in --</p> <p>21 obviously to our benefit as well to not have to spend</p> <p>22 the money on an arbitration and all of those things</p> <p>23 and the risk that sometimes we get these officers</p> <p>24 sent back.</p> <p>25 So there are times when we allow that box to</p>	<p style="text-align: right;">Page 37</p> <p>1 guess he would be present. Again, I can't tell you</p> <p>2 whether Bryan Yant was present at that interview or</p> <p>3 not or if he was only -- somebody else was and he was</p> <p>4 present at the TRB, we also provide them the notice</p> <p>5 of the TRB and the Use of Force Review Board.</p> <p>6 Then the next time we'd have contact with</p> <p>7 them -- again, we might have contact in between</p> <p>8 because of the array of questions that come up. But</p> <p>9 just per our procedure would be if they reach out to</p> <p>10 us and tell us they're representing them at the</p> <p>11 pre-term hearing, then we would work with them on</p> <p>12 getting them documents for the pre-term hearing. But</p> <p>13 typically speaking, it wouldn't be Bryan Yant that</p> <p>14 represented at the pre-term hearing; it would be Dave</p> <p>15 Roger or Kelly Sweeney at that point.</p> <p>16 Q Okay. And those are two lawyers?</p> <p>17 A Not Kelly, but Dave is.</p> <p>18 Q Okay. And are you communicating with the</p> <p>19 PPA via e-mail as well as over the phone?</p> <p>20 A I don't recall any communications with them</p> <p>21 on this particular case.</p> <p>22 The notices -- I don't know, because they</p> <p>23 didn't come from my office. They come from either</p> <p>24 the investigating body's office, so in this case,</p> <p>25 CIRT. They might e-mail, they might fax. I don't</p>

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11 (Pages 38 to 41)

<p style="text-align: right;">Page 38</p> <p>1 know. But I don't know if there's any additional 2 communication besides sending that notice to them of 3 the interview and of the board. Yeah, I don't know. 4 Q All right. I'm going to move on to 16 -- or 5 17, excuse me. So 17 is an explanation of 6 documentation produced by LVMPD in this case 7 concerning all LVNR reported incidents. 8 So I'd like you to -- you still have 9 Exhibit 9 there, which is the table, correct? 10 A Yes. 11 Q And I submitted a request to produce the 12 Adjudication of Complaints or other documentation 13 concerning some of the -- well, concerning the 14 incidents in that table. And it appears that maybe 15 one or two were apparently inadvertently left off, 16 but I wanted to go through those with you and just 17 verify that. Okay? 18 A Okay. 19 Q So I'm going to hand you a series of 20 exhibits. Well, maybe we can just do it one at a 21 time, make it easier. So I'm going to hand you 22 Exhibit 10. 23 (Deposition Exhibit No. 10 was marked 24 for identification.) 25 ///</p>	<p style="text-align: right;">Page 40</p> <p>1 those line and applicable disciplines is agreed upon 2 with the associations. 3 (Deposition Exhibit No. 11 was marked 4 for identification.) 5 BY MR. LAGOMARSINO: 6 Q Does 11 -- strike that. 7 Does Exhibit 11 appear to be the 8 Adjudication of Complaint relative to P-number 6876? 9 A Yes. It does appear that way. 10 Q Okay. And for the record, the prior 11 Adjudication of Complaint that's Exhibit 10 is 0177, 12 Exhibit 11 is 0178, produced by Metro. 13 Does Exhibit 11, with the exception of any 14 highlights or redactions, appear to be a true and 15 correct copy of the Adjudication of Complaint? 16 A Yes. 17 Q Who are -- strike that. 18 Who does Sergeant Steve Williams oversee? 19 A The employee, subject employee. 20 Q And Zolman? 21 A Would be the next level of supervision, I'm 22 assuming a lieutenant. 23 Q Okay. And then so I guess it's kind of been 24 the chain of command essentially, right? 25 A Yes.</p>
<p style="text-align: right;">Page 39</p> <p>1 BY MR. LAGOMARSINO: 2 Q So Exhibit 10 appears to be, when you 3 reference the table, the incident involving P-number 4 8862; is that correct? 5 A That's what it looks like. 6 Q And does Exhibit 10 appear to be a true and 7 correct copy of the Adjudication of Complaint with 8 the exception of the redactions? 9 A Yes. 10 Q William Teel on Exhibit 10, is that the area 11 commander, or who is that? 12 A That's the bureau commander at the jail. 13 Q Okay. And who is Charles Hank? 14 A It was the assistant sheriff over the jail 15 at the time. 16 Q And Lieutenant Fred Meyer? 17 A Immediate supervisor. 18 Q All right. 19 A So this case would have come out of Internal 20 Affairs, which is why it's adjudicated differently. 21 Q Is the Disciplinary Decision Guide a 22 document that's drafted by the department or the 23 union or both? 24 A Literally drafted, yes, by the department, 25 but it's a negotiated document. So each and every of</p>	<p style="text-align: right;">Page 41</p> <p>1 Q Sergeant, Lieutenant Zolman, Captain Baker; 2 is that right? 3 A Yeah. I don't know who that is. 4 Q And then Division Commander Fasulo? 5 A Chief at the time. 6 Q Chief. Okay. 7 A And you'll see when you get to later dates, 8 this changes. We stopped having below a bureau 9 commander participate in the adjudication process, 10 through negotiations with the associations. So some 11 of the adjudications might look different depending 12 on the years. 13 Q Okay. All right. So then going to 14 Exhibit 12. 15 (Deposition Exhibit No. 12 was marked 16 for identification.) 17 BY MR. LAGOMARSINO: 18 Q So I'm skipping on the table for now 19 P-number 7980 and going to P-number 9661. Does it 20 appear that Exhibit 12 relates to P-number 9661? 21 A Yes. And I stand corrected. That was gross 22 inappropriate use of force, based on the 23 adjudication. 24 Q Okay. Thank you for clarifying. 25 Does Exhibit 12 appear to be a true and</p>

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12 (Pages 42 to 45)

<p style="text-align: right;">Page 42</p> <p>1 correct copy of the Adjudication of Complaint?</p> <p>2 A The Adjudication of Complaint after the</p> <p>3 arbitration, yes.</p> <p>4 Q Okay. Who is Gary Schofield?</p> <p>5 A He was the deputy chief at the time. When</p> <p>6 cases come back from an arbitrator and there's no</p> <p>7 decision-making that goes into place, we just have</p> <p>8 one person in the chain sign off on the final</p> <p>9 adjudication.</p> <p>10 Q So on the bottom of Exhibit 12, it appears</p> <p>11 that there's writing that says "Use" -- is it "purge</p> <p>12 date of" --</p> <p>13 A "1/31/15."</p> <p>14 Q I apologize. For the record, at the bottom</p> <p>15 of the first page. What is a purge date, at least in</p> <p>16 reference to this document?</p> <p>17 A So that's the start purge date. So for</p> <p>18 40 hours, it would mean that this would purge from</p> <p>19 the personnel file on January 31, 2020.</p> <p>20 Q And can you explain the policy and/or law on</p> <p>21 purging of disciplinary documents from officers'</p> <p>22 files?</p> <p>23 A So it is, again, a negotiated item. It's</p> <p>24 mandatory collective bargaining. For reprimands,</p> <p>25 they purge at 18 months; minor discipline, which</p>	<p style="text-align: right;">Page 44</p> <p>1 anything.</p> <p>2 Q Okay. I may have asked you this, but I</p> <p>3 apologize. So Exhibit 12, is that a true and correct</p> <p>4 copy?</p> <p>5 A Yes, it appears so. Again, after the</p> <p>6 arbitrator's decision, so there would have been one</p> <p>7 prior to this, but this is the final adjudication</p> <p>8 based on the decision of the arbitration.</p> <p>9 Q Are you aware of any contact reports that</p> <p>10 Ken Lopera had in his career at Metro?</p> <p>11 A I'm not aware one way or the other.</p> <p>12 Q Okay.</p> <p>13 (Deposition Exhibit No. 13 was marked</p> <p>14 for identification.)</p> <p>15 BY MR. LAGOMARSINO:</p> <p>16 Q So I will ask you to look at LVMPD 1388 on</p> <p>17 Exhibit 9, and let me know if this adjudication</p> <p>18 complaint references the use of force incident.</p> <p>19 A Yes, it does.</p> <p>20 Q And that's with P-number 9845?</p> <p>21 A Yes.</p> <p>22 Q Okay. And does this appear to be a true and</p> <p>23 correct copy of the Adjudication of Complaint?</p> <p>24 A Yes, it does.</p> <p>25 MR. MCNUTT: Can I ask her a question?</p>
<p style="text-align: right;">Page 43</p> <p>1 could be suspension to disciplinary transfer, purge</p> <p>2 at three years; and major, a purge at five years.</p> <p>3 The calculation of the purge date depends on</p> <p>4 the type of case, but generally speaking, it's either</p> <p>5 the date they sign the adjudication or three months</p> <p>6 after the case is open, whichever is earlier.</p> <p>7 There's some nuances depending on if there's</p> <p>8 stays in the case or if it's an expedited.</p> <p>9 Once they purge, they're out of their</p> <p>10 personnel file, so that the department can't use it</p> <p>11 against them as far as escalating future discipline</p> <p>12 or withholding transfers or promotions. It can't be</p> <p>13 used against them, but we do keep them in response to</p> <p>14 Brady requests.</p> <p>15 Q Okay. And how about contact reports? When</p> <p>16 are they purged? Are those even placed in the file?</p> <p>17 A Not in the personnel file, no. They're</p> <p>18 placed in the supervisor employee personnel file</p> <p>19 that's housed with just the supervisor. Our policy</p> <p>20 is one year they purge.</p> <p>21 Q Are those kept for Brady requests?</p> <p>22 A No. It's not discipline.</p> <p>23 Q What is a contact report?</p> <p>24 A It is a counseling -- a documentation of a</p> <p>25 counseling, good, bad or indifferent. It could be</p>	<p style="text-align: right;">Page 45</p> <p>1 MR. LAGOMARSINO: Sure.</p> <p>2 MR. MCNUTT: Ms. Frost, what are you looking</p> <p>3 at on the Adjudication of Complaint form, whichever</p> <p>4 exhibit you care to look at, and then</p> <p>5 cross-referencing it with Exhibit 9 to verify that</p> <p>6 we're talking about the same one?</p> <p>7 THE WITNESS: The facts of the case. This</p> <p>8 one in particular, I know well, so this one I could</p> <p>9 tell you 100 percent it matches.</p> <p>10 But, yes, I'm looking at the facts as</p> <p>11 outlined in the Adjudication of Complaint and the</p> <p>12 facts in the comp chart. The comp chart is a summary</p> <p>13 of the Adjudication of Complaint.</p> <p>14 MR. MCNUTT: Okay. If you weren't familiar</p> <p>15 with the facts of the case, how would you link these</p> <p>16 two up?</p> <p>17 THE WITNESS: So, like, in the first two</p> <p>18 that Mr. Lagomarsino presented to me, I just looked</p> <p>19 at the facts as outlined in the Adjudication of</p> <p>20 Complaint and matched them to the facts in the comp</p> <p>21 summary.</p> <p>22 MR. MCNUTT: Okay. But there's no -- you</p> <p>23 would agree with me that there's no numerical</p> <p>24 reference or non- -- you know, some sort of</p> <p>25 administrative way that you've tagged these? It's</p>

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13 (Pages 46 to 49)

<p style="text-align: right;">Page 46</p> <p>1 just reading the facts of the complaint to marry them</p> <p>2 up, correct?</p> <p>3 THE WITNESS: Are you asking how we produce</p> <p>4 them or how am I answering these questions today?</p> <p>5 MR. MCNUTT: Well, I have no qualms with how</p> <p>6 you're answering the questions. I'm just asking if</p> <p>7 we've got a whole different set of documents how I</p> <p>8 would do it independently if I didn't have your</p> <p>9 knowledge.</p> <p>10 THE WITNESS: You would just have to look at</p> <p>11 the facts in the comp and marry them to the</p> <p>12 Adjudication of Complaint facts.</p> <p>13 MR. MCNUTT: Thank you.</p> <p>14 BY MR. LAGOMARSINO:</p> <p>15 Q And just to clarify an answer that you just</p> <p>16 gave, Metro was provided discovery requests asking</p> <p>17 for documentation pertaining to the chart that's</p> <p>18 Exhibit 9, correct?</p> <p>19 A Yes.</p> <p>20 Q And Exhibit 9, is that a chart that was</p> <p>21 drafted for purposes of this litigation in response</p> <p>22 to a discovery request?</p> <p>23 A The way it looks, yes. We keep a master</p> <p>24 chart in our files, in our H drive of everything. So</p> <p>25 we pulled out the ones that were relevant to the</p>	<p style="text-align: right;">Page 48</p> <p>1 Q And does Exhibit 14 appear to be a true and</p> <p>2 correct copy of the Adjudication of Complaint?</p> <p>3 A Yes. Well, I don't know why it's not</p> <p>4 signed. But the complaint -- the way it's written</p> <p>5 and everything looks accurate based on how we do</p> <p>6 things, but I don't know why this one is not signed.</p> <p>7 Q So I guess a better question, does it appear</p> <p>8 to be a true and correct copy of the unsigned</p> <p>9 Adjudication of Complaint?</p> <p>10 A Yes.</p> <p>11 Q Okay. All right. And then Exhibit 15.</p> <p>12 (Deposition Exhibit No. 15 was marked</p> <p>13 for identification.)</p> <p>14 BY MR. LAGOMARSINO:</p> <p>15 Q Does Exhibit 15 appear to relate to P-number</p> <p>16 6908 on --</p> <p>17 A Yes, it does.</p> <p>18 Q Okay. And does Exhibit 15 appear to be a</p> <p>19 true and correct copy of the Adjudication of</p> <p>20 Complaint?</p> <p>21 A Yes, it does.</p> <p>22 Q Okay.</p> <p>23 (Deposition Exhibit No. 16 was marked</p> <p>24 for identification.)</p> <p>25 ///</p>
<p style="text-align: right;">Page 47</p> <p>1 discovery request. And we have the names, obviously,</p> <p>2 not redacted on our version, and, again, on the</p> <p>3 Adjudication of Complaint, the names and P-number are</p> <p>4 not redacted. So that's how we are sure we marry</p> <p>5 them up. But here today I'm just looking at the</p> <p>6 facts.</p> <p>7 MR. ANDERSON: If I could do it over, I</p> <p>8 would not redact the P-numbers on the Adjudication of</p> <p>9 Complaint, because it would have been easier.</p> <p>10 MR. MCNUTT: Right. That's what I was</p> <p>11 getting at. Thanks.</p> <p>12 MR. ANDERSON: Yeah. But I did check them.</p> <p>13 MR. LAGOMARSINO: The redactions did seem</p> <p>14 more calculated in these ones compared to the other</p> <p>15 one.</p> <p>16 MR. ANDERSON: I have professional duties.</p> <p>17 MR. LAGOMARSINO: Can't tell how hard you're</p> <p>18 pressing that key word.</p> <p>19 All right. So Exhibit 14.</p> <p>20 (Deposition Exhibit No. 14 was marked</p> <p>21 for identification.)</p> <p>22 BY MR. LAGOMARSINO:</p> <p>23 Q Does Exhibit 14 appear to relate to the</p> <p>24 incident involving P-number 13142?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 49</p> <p>1 BY MR. LAGOMARSINO:</p> <p>2 Q Does Exhibit 16 appear to relate to P-number</p> <p>3 4991 on LVMPD 1390?</p> <p>4 A Yes.</p> <p>5 Q And did this take place before you were</p> <p>6 hired over at Metro?</p> <p>7 A The incident, yes. I came to Metro on</p> <p>8 April 5, 2015. So it looks like this individual</p> <p>9 retired right when I got here.</p> <p>10 Q Okay. Are you familiar with this incident</p> <p>11 at all?</p> <p>12 A No. I don't have any personal knowledge of</p> <p>13 this incident.</p> <p>14 Q Okay. All right. Does it appear to be a</p> <p>15 true and correct copy of the Adjudication of</p> <p>16 Complaint?</p> <p>17 A Yes.</p> <p>18 Q So with respect to P-number 8577 on LVMPD</p> <p>19 1390, would there have been an Adjudication of</p> <p>20 Complaint in that case?</p> <p>21 A There should have been, yes.</p> <p>22 Q And would there have been an Adjudication of</p> <p>23 Complaint for -- on the first page of Exhibit 9,</p> <p>24 7980, P-number 7980?</p> <p>25 A Yes. There should have been.</p>

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14 (Pages 50 to 53)

<p style="text-align: right;">Page 50</p> <p>1 Q Were you part of the process in producing 2 the Adjudication of Complaint relative to this draft? 3 A An analyst in my office produced them. So 4 I'm not sure what happened between looking at this 5 chart and producing them. I'm not sure where the 6 error came in, but we can get those to you. 7 Q All right. Now, with respect to Exhibit 9, 8 which is the table, what is your understanding of 9 what that chart represents? 10 A This represents our comparable discipline. 11 So like I said, we have a master table that we keep 12 of all discipline with all policy violations. When 13 we're asked to produce the comps for a specific case, 14 we produce the comps relating to that policy 15 violation. And they're created after the 16 Adjudication of Complaint comes in. They are created 17 by analysts in my office at the time. And everything 18 on here is completed, and then the summary is done 19 based on the facts in the Adjudication of Complaint. 20 Q Okay. So where it says "Cases involving the 21 neck," was that just for this particular case? 22 A Yes. So when we pull out the part of the 23 comp chart that we're working with, we'll generally 24 identify what it is that we pulled the chart out, 25 what the reasoning for that was.</p>	<p style="text-align: right;">Page 52</p> <p>1 BY MR. LAGOMARSINO, 2 Q The bottom of the page it says "07/27/17," 3 correct, bottom right? 4 MR. MCNUTT: Objection. Form. 5 THE WITNESS: Yes. I see that that says 6 that. 7 MR. LAGOMARSINO: Okay. All right. 8 THE WITNESS: I -- 9 MR. LAGOMARSINO: Am I saying something 10 wrong? Like, if I have a chance to correct the form 11 of the question, I want to -- I'm not accusing you of 12 a bad objection, I just want to... 13 MR. MCNUTT: No. It was unclear to me 14 whether she, as the 30(b)(6), has the ability to 15 authenticate this document. That's all. 16 MR. LAGOMARSINO: Oh, okay. 17 MR. MCNUTT: I don't know if she does or 18 doesn't. I... 19 MR. LAGOMARSINO: Okay. That's what I'm 20 going to clear up. 21 THE WITNESS: I really don't have knowledge 22 of this document to tell you one way or another 23 whether this looks -- these numbers are accurate or 24 this document is accurate. I mean, it appears to be 25 based on what I see here, but I don't have</p>
<p style="text-align: right;">Page 51</p> <p>1 Q Okay. So continuing on Exhibit 17 -- strike 2 that. 3 Topic 17. I'll hand you what's being marked 4 as Exhibit 21. 5 (Deposition Exhibit No. 21 was marked 6 for identification.) 7 BY MR. LAGOMARSINO: 8 Q What is Exhibit 21? 9 A This is part of a document created by, I 10 believe, CIRT. I'm not 100 percent sure. It says 11 "LVMPD Internal Affairs Bureau." You know what? I 12 can't answer that. I'm not 100 percent sure. 13 Q Okay. Well, irrespective of who creates it, 14 Metro creates it, correct? 15 A That's correct. 16 Q Have you ever seen this chart before? 17 A I don't know that I've seen this exact one. 18 I've seen something like it. 19 Q Does this at least appear to be a true and 20 correct copy of the use of force complaints for 2012 21 through 2017, year to date? It appears that's 22 July 27, 2017. 23 MR. MCNUTT: Objection. Form. Sorry, were 24 you done? 25 MR. LAGOMARSINO: Yeah. Sorry.</p>	<p style="text-align: right;">Page 53</p> <p>1 independent knowledge of this document. 2 BY MR. LAGOMARSINO: 3 Q Okay. Have you ever seen a document like 4 this? I guess let me retract that question. 5 Are you able to explain what these findings 6 mean? 7 A Yeah. 8 Q So let's go through. Do you have personal 9 knowledge, at least, on what some of these findings 10 might mean? 11 A Yes. 12 MR. ANDERSON: Andre, I'll stipulate it's a 13 true and authentic copy of what it purports to be. 14 MR. LAGOMARSINO: Okay. Thank you. 15 BY MR. LAGOMARSINO: 16 Q What does -- so here you have complaints and 17 allegations for the entire department. Is it fair to 18 say that a complaint can contain more than one 19 allegation? 20 A Yes, and more than one for this employee. 21 Q Okay. So what is a complaint? 22 A A complaint would be anything -- so I guess 23 it doesn't include CIRT complaints, it doesn't look 24 like. So this just would be complaints that come 25 into Internal Affairs Bureau either through internal</p>

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15 (Pages 54 to 57)

<p style="text-align: right;">Page 54</p> <p>1 mechanisms, somebody files it internal, sergeant 2 against the officer, or somebody from outside of 3 Metro comes in and says, "Somebody used bad force on 4 me," or they go to the Citizen Review Board and file 5 their complaint. And, again, that would be a citizen 6 outside of Metro that would file the complaint with 7 the Citizen Review Board. 8 Q Is there any other mechanism that a citizen 9 can use besides Citizen Review Board to report a 10 complaint? 11 A Yeah, Internal Affairs Bureau. They can 12 come directly to Metro and file a complaint. 13 Q Okay. So if they go to Metro, they'll be 14 directed to IAB? 15 A Yes. 16 Q So does it appear that this document 17 reflects the -- all the complaints received by Metro 18 in the years delineated from citizens? 19 A Yes. 20 Q Okay. What are allegations? 21 A What are allegations? 22 Q Yes. 23 A Would be -- again, I don't know how they got 24 this document. I'm assuming because it's just use of 25 force complaints, that this is just use of force</p>	<p style="text-align: right;">Page 56</p> <p>1 and I always confuse these two. One is that 2 allegations alleged did not occur, and the other one 3 is the allegations did occur but they weren't a 4 policy violation. And I can never remember which one 5 is which. 6 Q Okay. "Investigation dismissed," what does 7 that mean? 8 A I don't know. Obviously it's rare, one 9 time. I don't know what that means. 10 Q Okay. "No policy violation," is that 11 basically an investigation was completed and it was 12 found that there was no policy violation? 13 A If there's no policy violation, it is a 14 prelim investigation. It's closed out on the front 15 end. So they can review the jail video, body worn 16 cam and clearly see what occurred, or it was a 17 completely untruthful complaint, which we get at 18 times, so they close it out on the front end. 19 If it's a full investigation, you would see 20 those findings "exonerated," "not sustained," "SI 21 sustained," "unfounded." 22 Q What does SI mean? 23 A Supervisor intervention. It's a contact 24 report. That can be done on the front end or the 25 back end. It's very low here, as you can see,</p>
<p style="text-align: right;">Page 55</p> <p>1 allegations, but maybe it includes other allegations. 2 So sometimes, you know, it's against Officer Smith 3 and the complaint is "He was rude to me," so 4 interaction with the public, and "He used bad force 5 on me." That would be two allegations. Or it could 6 be both Officer Smith and Officer Jones used bad 7 force; two subject employees, one complaint, two 8 allegations. 9 Q Do you know if this document compiles, like, 10 "He was rude to me" complaints? 11 A I don't know. I'm not sure how they got 12 this. I mean, it says just use of force complaints, 13 but I don't know if in the complaint they looked at 14 other allegations that can come along with it. 15 Q Fair enough. So what you're saying is these 16 are use of force complaints, but the use of force 17 complaints could contain other non force-related 18 allegations? 19 A In the complaint world, yes. I don't know 20 if this document is talking about. 21 Q What is DSD staff? 22 A Detention Services Division. 23 Q What does it mean if a finding is 24 exonerated? 25 A Well, there's "exonerated" and "unfounded,"</p>	<p style="text-align: right;">Page 57</p> <p>1 because use of force is typically disciplinary if 2 it's an inappropriate or bad violation of our policy. 3 Q Okay. 4 (Deposition Exhibit No. 22 was marked 5 for identification.) 6 BY MR. LAGOMARSINO: 7 Q Is it your understanding that all incidents 8 where an LVNR was used are to be reported? 9 A I believe that's reportable use of force, 10 but I'm not the expert on that. 11 MR. ANDERSON: Andre, this isn't Bates 12 stamped. Did we produce this? I mean, I should 13 have. I'm just wondering if we did. 14 MR. LAGOMARSINO: I'm assuming you did. 15 MR. ANDERSON: Yeah. I don't have a problem 16 with it, I just... 17 MR. LAGOMARSINO: I mean -- 18 MR. MCNUTT: I did not produce it. 19 MR. ANDERSON: You're fine. I was just 20 wondering. 21 MR. LAGOMARSINO: And I guess I'm just going 22 on the topic of explanation of documentation 23 produced. So I will take a look. 24 MR. ANDERSON: No, I know we produced it at 25 some point, so...</p>

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16 (Pages 58 to 61)

<p style="text-align: right;">Page 58</p> <p>1 BY MR. LAGOMARSINO:</p> <p>2 Q Have you ever seen this documentation?</p> <p>3 A No.</p> <p>4 MR. LAGOMARSINO: Maybe we'll just -- maybe</p> <p>5 we can agree to save this for Bland, because I'm just</p> <p>6 trying to get into what's effective, what's not</p> <p>7 effective, just explaining this stuff.</p> <p>8 MR. ANDERSON: Yeah. But I will stipulate</p> <p>9 this is what it purports to be.</p> <p>10 MR. LAGOMARSINO: Okay. And stipulate it's</p> <p>11 a true and correct copy?</p> <p>12 MR. ANDERSON: Yes.</p> <p>13 MR. LAGOMARSINO: Okay.</p> <p>14 MR. ANDERSON: Yeah, I had Bland look at</p> <p>15 this.</p> <p>16 MR. LAGOMARSINO: Okay.</p> <p>17 BY MR. LAGOMARSINO:</p> <p>18 Q Is Exhibit 9 -- sorry, moving on to Topic</p> <p>19 18, which is the discipline police officers have</p> <p>20 received for improper neck restraints, is that what</p> <p>21 Exhibit 9 is?</p> <p>22 A Yes.</p> <p>23 Q And the other Adjudication of Complaints?</p> <p>24 A Yes.</p> <p>25 Q And the same thing with respect to 19?</p>	<p style="text-align: right;">Page 60</p> <p>1 Q In this case, Officer Lopera had a</p> <p>2 recommendation of termination, but he wasn't</p> <p>3 terminated, correct?</p> <p>4 A That's correct.</p> <p>5 Q And he would have had an opportunity to try</p> <p>6 to convince the panel at the pre-termination hearing</p> <p>7 to go against the recommendation?</p> <p>8 A That's correct.</p> <p>9 Q Have you ever seen in your career the panel</p> <p>10 at the pre-termination hearing not go with the</p> <p>11 recommendation?</p> <p>12 A Yes.</p> <p>13 Q Is it totally uncommon, common?</p> <p>14 A It's not common.</p> <p>15 MR. MCNUTT: Objection. Form.</p> <p>16 THE WITNESS: It's not common. I can think</p> <p>17 of, I would say, less than five. I don't know. That</p> <p>18 doesn't really give you a number, because I can't</p> <p>19 tell you how many terms we've had. But it's not</p> <p>20 common. I wouldn't say it's rare, but --</p> <p>21 BY MR. LAGOMARSINO:</p> <p>22 Q Would you say --</p> <p>23 A -- it's not even half the time.</p> <p>24 Q Okay. I was going to say, so you'd say a</p> <p>25 majority of the time the pre-termination panel will</p>
<p style="text-align: right;">Page 59</p> <p>1 Topic 19 is the discipline for using an LVNR?</p> <p>2 A Yes.</p> <p>3 Q Yeah, sorry, one is neck restraint, one</p> <p>4 is --</p> <p>5 A Yeah. We try to be overly broad, so some</p> <p>6 might not quite qualify for what you're looking for.</p> <p>7 But we try to be overly broad with the request.</p> <p>8 MR. LAGOMARSINO: Okay. All right. I know</p> <p>9 I have about five more minutes' worth of questions by</p> <p>10 the time -- let's take a quick break.</p> <p>11 And then I'm just coming back to discipline</p> <p>12 for Lopera. It's pretty much been covered.</p> <p>13 THE VIDEOGRAPHER: We are going off the</p> <p>14 record. The time is approximately 11:24 a.m.</p> <p>15 (Off the record.)</p> <p>16 THE VIDEOGRAPHER: The time is approximately</p> <p>17 11:32 a.m. We are back on the record.</p> <p>18 BY MR. LAGOMARSINO:</p> <p>19 Q All right. Just a few more questions from</p> <p>20 me. So please go back to Exhibit 2. Is a voluntary</p> <p>21 retirement considered discipline?</p> <p>22 A No.</p> <p>23 Q Is a voluntary retirement on disability</p> <p>24 considered discipline?</p> <p>25 A No.</p>	<p style="text-align: right;">Page 61</p> <p>1 go with the recommendation?</p> <p>2 A Yes.</p> <p>3 MR. MCNUTT: Objection. Form.</p> <p>4 BY MR. LAGOMARSINO:</p> <p>5 Q But would you say anywhere from -- and this</p> <p>6 is anecdotal evidence a little bit from your</p> <p>7 experience, correct?</p> <p>8 A Correct.</p> <p>9 Q Have you run any statistics to see how often</p> <p>10 the panel at the pre-term hearing goes against the</p> <p>11 recommendation?</p> <p>12 A I have not. I've had them, but I don't have</p> <p>13 that off the top of my head.</p> <p>14 Q Okay. But it happens, correct?</p> <p>15 A It does happen.</p> <p>16 Q Okay. And then if the pre-termination panel</p> <p>17 decides to go with the recommendation and recommend</p> <p>18 termination to the sheriff, have you seen the sheriff</p> <p>19 decline to go with the recommendation of termination?</p> <p>20 A Not the sheriff, no. And the sheriff can</p> <p>21 also overrule the pre-term decision to not terminate.</p> <p>22 Q Okay. All right. Have you seen them do</p> <p>23 that?</p> <p>24 A Not the sheriff.</p> <p>25 Q Okay. Have you been employed at Metro under</p>

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17 (Pages 62 to 65)

<p style="text-align: right;">Page 62</p> <p>1 a different sheriff?</p> <p>2 A No, I have not.</p> <p>3 Q Okay. Are you aware of what other sheriffs</p> <p>4 have done?</p> <p>5 A I'm aware of one instance where the sheriff</p> <p>6 did not agree with the pre-term board's</p> <p>7 recommendation.</p> <p>8 Q Was that Sheriff Gillespie?</p> <p>9 A Yes.</p> <p>10 Q And was that a publicized case?</p> <p>11 A I believe so. I don't know if the internal</p> <p>12 portion of it was, but I believe that the incidents</p> <p>13 that caused the investigation were.</p> <p>14 Q And then if the officer is not satisfied</p> <p>15 with the decision of the pre-term panel or the</p> <p>16 sheriff, that officer then also has the opportunity</p> <p>17 to arbitrate?</p> <p>18 A That's correct. Or there's -- if it's less</p> <p>19 than termination, they can go through the other</p> <p>20 grievance process.</p> <p>21 Q And what is that?</p> <p>22 A So, for example, a case right now went to</p> <p>23 the pre-term board. The pre-term board did not</p> <p>24 terminate; they recommended hours instead. So that</p> <p>25 grievance process goes to, I think, the bureau</p>	<p style="text-align: right;">Page 64</p> <p>1 four years, correct?</p> <p>2 A Five.</p> <p>3 Q Five. Since --</p> <p>4 A April --</p> <p>5 Q -- October of -- well, I'm sorry. When?</p> <p>6 A Since April of 2015.</p> <p>7 Q Okay. So --</p> <p>8 A Almost.</p> <p>9 Q Almost five?</p> <p>10 A Yeah.</p> <p>11 Q Five next year?</p> <p>12 A Yes.</p> <p>13 Q Okay. So any answer you gave, as he said in</p> <p>14 a follow-up, is somewhat anecdotal because you would</p> <p>15 only be familiar with the cases that you dealt with</p> <p>16 in those last four and a half years, correct?</p> <p>17 MR. LAGOMARSINO: Form.</p> <p>18 THE WITNESS: Not any answer I gave. But on</p> <p>19 the ones where I said "In my experience," those would</p> <p>20 be based on the time that I was at Metro or maybe</p> <p>21 sometime before, depending on the answer. Because</p> <p>22 when I was an attorney at Marquis Aurbach Coffing, I</p> <p>23 represented the department, Las Vegas Metropolitan</p> <p>24 Police Department, in disciplinary appeals.</p> <p>25 ///</p>
<p style="text-align: right;">Page 63</p> <p>1 commander, generally speaking. Sometimes it's the</p> <p>2 deputy chief, depending on how it's adjudicated, and</p> <p>3 then from there it would go to four PPA, our labor</p> <p>4 management board.</p> <p>5 Q Okay.</p> <p>6 A Our labor management board is comprised of a</p> <p>7 randomly selected PPA board member, a randomly</p> <p>8 selected PPA member, a randomly selected lieutenant</p> <p>9 and a randomly selected deputy chief or captain and</p> <p>10 then an arbitrator.</p> <p>11 MR. LAGOMARSINO: Okay. All right. I have</p> <p>12 no further questions.</p> <p>13 EXAMINATION</p> <p>14 BY MR. MCNUTT:</p> <p>15 Q Ms. Frost, my name is Dan McNutt. I</p> <p>16 represent Ken Lopera. I have a few questions for</p> <p>17 you.</p> <p>18 Would you look at Exhibit 2.</p> <p>19 A Yes.</p> <p>20 Q I apologize. Exhibit 21. It's this one.</p> <p>21 Are you the person most knowledgeable about this</p> <p>22 document?</p> <p>23 A No.</p> <p>24 Q Any question where Mr. Lagomarsino asked</p> <p>25 about in your career, your career with Metro has been</p>	<p style="text-align: right;">Page 65</p> <p>1 BY MR. MCNUTT:</p> <p>2 Q That wasn't my question. My question was in</p> <p>3 any question that Andre asked where he referenced</p> <p>4 your career, not where you referred to your</p> <p>5 experience. So when he -- did you understand that</p> <p>6 when he said "your career," he was talking about the</p> <p>7 four and a half years you've been with Metro? Is</p> <p>8 that how you were answering the question?</p> <p>9 A I believe so, yes, if that's how the</p> <p>10 question was asked.</p> <p>11 Q Okay. So with respect to when you gave the</p> <p>12 very nice narrative answer that he asked for earlier</p> <p>13 on regarding the process by which an officer can be</p> <p>14 separated from Metro and you laid it out and we</p> <p>15 talked -- you referred to it as a pre-term board or</p> <p>16 pre-termination hearing and then the termination</p> <p>17 board and then an arbitration, correct? Are those</p> <p>18 kind of the three big steps?</p> <p>19 A Just a pre-termination hearing.</p> <p>20 Q Okay.</p> <p>21 A Then the sheriff would either agree or not</p> <p>22 agree with the recommendation of the pre-term</p> <p>23 hearing. And then only if the employee then appeals</p> <p>24 that would it go to arbitration.</p> <p>25 Q So at the pre-term hearing, would an officer</p>

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 * * * Videotaped Deposition * * *

18 (Pages 66 to 69)

<p style="text-align: right;">Page 66</p> <p>1 have the opportunity to present evidence on his 2 behalf or through an attorney or a representative? 3 A Absolutely. It's their time to explain why 4 they should not be terminated. 5 Q Okay. Do you have any statistics regarding 6 how often an officer prevails at that stage? 7 A I have them in my office somewhere, but I do 8 not have them off the top of my head. I can think of 9 less than -- I can think of, like, three off the top 10 of my head. 11 Q And that's three in the last four and a half 12 years? 13 A That's correct. 14 Q Now, are you exclusively the lawyer in 15 charge or the employee of Metro in charge of this 16 area, so would there be other people that have your 17 similar job title and you split the duties or -- 18 A No. I'm -- I'm in charge of our bureau that 19 handles the discipline and grievances for officers 20 and civilians. 21 Q So are you aware of all of the cases in the 22 last four and a half years, is what I'm asking? 23 A Yes. 24 Q Okay. 25 A But I could be missing someone. I'm</p>	<p style="text-align: right;">Page 68</p> <p>1 document says regarding the separation of Ken Lopera 2 from Metro, correct? 3 MR. ANDERSON: Objection. Form. 4 THE WITNESS: Yeah. Your question is a 5 little bit confusing, but what I can tell from this 6 document is he voluntarily retired with a medical 7 disability. 8 BY MR. MCNUTT: 9 Q Correct. And you couldn't offer any 10 testimony to suggest or speculate what would have 11 happened had Ken Lopera not exercised his rights to 12 separate from Metro the way he did, correct? 13 A I can only tell you the process. 14 Q Why is there no definition of gross 15 insubordination? 16 A I don't know the answer to that question. 17 Q Would it be your recommendation to the 18 sheriff that there should be a definition of gross 19 insubordination so officers know what the standard 20 is? 21 MR. ANDERSON: Objection to form. 22 THE WITNESS: It would make my job easier if 23 there was a definition, but I think the trouble is 24 that it's a really fact-intensive determination and 25 to try to define it is very difficult. It really</p>
<p style="text-align: right;">Page 67</p> <p>1 thinking off the top of my head. That's why I'm 2 saying I can think of less than five. 3 Q And if an officer lost in the termination 4 phase, he could then proceed with the arbitration 5 that you discussed, correct? 6 A Correct. So if the officer was terminated, 7 then they could file an appeal for arbitration. 8 Q And the officer would, himself or through a 9 representative, also have another opportunity to 10 present evidence to overturn the prior decision, 11 correct? 12 A That's correct. 13 Q And if the arbitrator or the arbitration 14 panel rules in the officer's favor, can the sheriff 15 overrule that then or is he bound to that? 16 A He is bound by that, unless we file an 17 appeal to the district court -- and as you know, that 18 standard is very high, so we do not do that very 19 often -- and the decision of the arbitrator stands. 20 Q Okay. So now looking at Exhibit 2, the 21 Employment Separation Notice, so by virtue of the 22 fact that the "voluntary retirement" box is checked 23 as well as the subset of that, which is the 24 "disability (PERS)" box is checked, you really can't 25 infer anything other than what the face of this</p>	<p style="text-align: right;">Page 69</p> <p>1 depends on the facts and circumstances of each 2 particular case. 3 BY MR. MCNUTT: 4 Q I don't recall your answer to 5 Mr. Lagomarsino earlier on as to whether you have 6 ever testified as a 30(b)(6) witness before. Have 7 you? 8 A I believe -- well, I know I have in one 9 case. I can't remember the second case if I was 10 30(b)(6) or they just identified my name personally. 11 Q In this case, what documents did you review 12 to prepare for your deposition? 13 A The Comparable Discipline Chart and 14 Adjudication of Complaints. 15 Q And did you -- without telling me any 16 discussions, did you prepare or were you assisted in 17 preparation for this deposition by anyone? 18 A I did meet with Craig. 19 Q Your counsel? 20 A Yes. 21 Q Or Metro's counsel? 22 A Yes. 23 Q Okay. Now, as a practicing lawyer, prior to 24 your career with Metro, you're aware of the fact that 25 some things -- if a 30(b)(6) witness is prepared, the</p>

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19 (Pages 70 to 73)

<p style="text-align: right;">Page 70</p> <p>1 facts that were presented to the 30(b)(6) witness are</p> <p>2 not privileged? Are you aware of that?</p> <p>3 A Sounds right to me.</p> <p>4 Q Okay. So my question, then, is did Craig</p> <p>5 provide any facts to you to prepare you for this</p> <p>6 deposition?</p> <p>7 A He told me generally about this case, but</p> <p>8 that was it.</p> <p>9 Q Okay. And what did he generally tell you</p> <p>10 about this case?</p> <p>11 A That there were two lawsuits going on: one</p> <p>12 for the children, one for the mom, I think. And I</p> <p>13 think that's really it. It was very brief.</p> <p>14 Q So with respect to the documents that you</p> <p>15 reviewed in preparing for the deposition, is it your</p> <p>16 testimony you didn't need anybody's help in</p> <p>17 understanding what those documents stand for?</p> <p>18 A No. Those are documents created by my</p> <p>19 office.</p> <p>20 Q Okay. And so those are documents you deal</p> <p>21 with routinely every day?</p> <p>22 A Yes.</p> <p>23 MR. MCNUTT: I have no further questions.</p> <p>24 ///</p> <p>25 ///</p>	<p style="text-align: right;">Page 72</p> <p>1 you to fill in how many pre-termination hearings</p> <p>2 there have been and how many have -- would you able</p> <p>3 to fill that in?</p> <p>4 MR. MCNUTT: Objection. Form.</p> <p>5 THE WITNESS: Assuming my counsel said it's</p> <p>6 the right thing to do, yes, I can. I have that</p> <p>7 information.</p> <p>8 BY MR. LAGOMARSINO:</p> <p>9 Q All right. And if I asked to fill in the</p> <p>10 blank as to how many pre-termination hearing</p> <p>11 panels -- is that the right word, "panels"?</p> <p>12 A Board is what we call it.</p> <p>13 Q Board.</p> <p>14 -- how many pre-termination hearing boards</p> <p>15 did not go with the recommendation, would you be able</p> <p>16 to fill in that blank?</p> <p>17 A I would have that information, yes.</p> <p>18 Q So I would ask at this point, unless counsel</p> <p>19 advises you otherwise, to kindly fill in those</p> <p>20 blanks. We'll leave blanks here in the deposition.</p> <p>21 A And you want just from my tenure or...</p> <p>22 Q Just from your tenure.</p> <p>23 MR. MCNUTT: I'll object to that discovery</p> <p>24 request. We can deal with it.</p> <p>25 (The following information to be</p>
<p style="text-align: right;">Page 71</p> <p>1 FURTHER EXAMINATION</p> <p>2 BY MR. LAGOMARSINO:</p> <p>3 Q Just a follow-up. In your career with</p> <p>4 Metro, how many pre-termination hearings can you</p> <p>5 estimate there have been?</p> <p>6 A I really can't estimate that. I would be</p> <p>7 way off, or I could be way off. I'd be totally</p> <p>8 guessing if I gave you a number.</p> <p>9 Q Okay. Is it every day there's a</p> <p>10 pre-termination hearing?</p> <p>11 A No.</p> <p>12 Q All right. Would you say 25 or less?</p> <p>13 MR. MCNUTT: Objection. Form.</p> <p>14 THE WITNESS: In my four and a half years?</p> <p>15 BY MR. LAGOMARSINO:</p> <p>16 Q Yeah.</p> <p>17 A I would say that sounds about right, less --</p> <p>18 25 or less. But, again, I'm guessing. I'm just</p> <p>19 going off what I -- what I -- my feeling is on those.</p> <p>20 Q Okay. We could look at the statistics to</p> <p>21 see how many there have been, correct?</p> <p>22 A Absolutely.</p> <p>23 Q Okay.</p> <p>24 A We have those numbers.</p> <p>25 Q If we leave a blank in the deposition for</p>	<p style="text-align: right;">Page 73</p> <p>1 supplied by the Deponent:</p> <p>2 _____</p> <p>3 _____</p> <p>4 _____.)</p> <p>5 MR. LAGOMARSINO: Okay. All right.</p> <p>6 THE VIDEOGRAPHER: Excuse me, Counsel.</p> <p>7 Would you like a copy of the video?</p> <p>8 MR. ANDERSON: No.</p> <p>9 MR. LAGOMARSINO: No more questions, sorry.</p> <p>10 THE VIDEOGRAPHER: This concludes the video</p> <p>11 deposition of Jamie Frost, Esquire.</p> <p>12 The original media of today's testimony will</p> <p>13 remain in the custody of Las Vegas Legal Video.</p> <p>14 The time is approximately 11:47 a.m. We are</p> <p>15 going off the record.</p> <p>16 (Thereupon, the videotaped deposition</p> <p>17 was concluded at 11:47 a.m.)</p> <p>18</p> <p>19 * * * * *</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

